

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TEMUJIN KENSU, INDIVIDUALLY,
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

Plaintiffs,

Case No. 2:18-cv-11086-SFC-PTM

Hon. Sean F. Cox
Mag. Judge Patricia T. Morris

v.

JPAY INC.

Defendant.

EXCOLO LAW PLLC
Keith L. Altman (P81702)
Solomon M. Radner (P73653)
Ari Kresch (P29593)
26700 Lahser Road, Suite 401
Southfield, MI 48033
516-456-5885
kaltman@lawampmmt.com

Attorneys for Plaintiff and the Class

MORGAN, LEWIS, & BROCKIUS LLP
Elizabeth Herrington (IL#6244547)
Zachary R. Lazar (IL#6325727)
77 West Wacker Drive, Fifth Floor
Chicago, IL 60601
312-324-1000
beth.herrington@morganlewis.com

HICKEY HAUCK BISHOFF & JEFFERS
PLLC
Benjamin W. Jeffers (P57161)
One Woodward Avenue, Suite 2000
Detroit, MI 48226
313-964-8600
bjeffers@hhbjlaw.com

Attorneys for Defendant

PLAINTIFF'S MOTION FOR LEAVE TO FILE A REPLY TO
DEFENDANT'S RESPONSE REGARDING OBJECTIONS TO
REPORT AND RECOMMENDATION

Plaintiff Temujin Kensu and the Class, by and through their counsel, EXCOLO LAW, PLLC, move to file a short reply to Defendant's Response to Plaintiff's Objections to Magistrate Judge Patricia T. Morris's Report and Recommendation Entered October 22, 2018. (ECF No. 25). Plaintiff respectfully requests leave to file the short reply to address new law and facts contained in their responsive motion.

Plaintiff respectfully requests permission to address these matters in a short reply brief that will be no more than ten pages, which will be filed upon receiving permission from the Court.

For the reasons stated in the attached brief, Plaintiff respectfully requests leave to file a short reply of no more than ten pages to the issues addressed above.

Dated: November 20, 2018

Respectfully Submitted,

EXCOLO LAW, PLLC
By: /s/ Keith Altman
Keith Altman (P81702)
Excolo Law PLLC
26700 Lahser Road, Suite 401
Southfield, MI 48033
(516) 456-5885
kaltman@excololaw.com

Attorneys for Plaintiff and the Class

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Elizabeth Herrington (IL#6244547)
Zachary R. Lazar (IL#6325727)
77 West Wacker Drive, Fifth Floor
Chicago, IL 60601
312-324-1000
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PLLC
Benjamin W. Jeffers (P57161)
One Woodward Avenue, Suite 2000
Detroit, MI 48226
313-964-8600
bjeffers@hhbjlaw.com

Attorneys for Defendant

**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE A
REPLY TO DEFENDANT'S RESPONSE REGARDING OBJECTIONS TO
REPORT AND RECOMMENDATION**

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Wilcoxson v. Bros., No. 15-13308, 2016 WL 4119802 (E.D. Mich Aug. 3, 2016)

Seay v. TVA, 339 F.3d 454 (6th Cir. 2003)

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Local Rule 7.1(a).....1

INTRODUCTION

Plaintiff Temujin Kensu and the Class, by and through their counsel, EXCOLO LAW, PLLC, move to file a short reply to Defendant's Response to Plaintiff's Objections to Magistrate Judge Patricia T. Morris's Report and Recommendation Entered October 22, 2018. (ECF No. 25). Plaintiff respectfully requests leave to file the short reply to address new law and facts contained in their responsive motion.

ARGUMENT

Plaintiff seeks leave to file a reply to arguments raised for the first time in Defendant JPay's Response to Plaintiff's Objections to Magistrate Judge Patricia T. Morris's Report and Recommendation Entered October 22, 2018. (ECF No. 25). Pursuant to Local Rule 7.1(a), Plaintiff sought concurrence in this Motion from Counsel for JPay, but was unable to obtain concurrence.

Although neither the federal rules nor the Eastern District of Michigan's Local Rules provide for replies to responses to objections to a Magistrate's report and recommendation as a matter of course, surreplies "are often permitted where 'new submissions and/or arguments are included in the reply brief.'" *Wilcoxson v. Bros.*, No. 15-13308, 2016 WL 4119802, at *3 (E.D. Mich Aug. 3, 2016) (quoting *Seay v. TVA*, 339 F.3d 454, 481 (6th Cir. 2003)); *see also Kentucky v. Marathon Petroleum Co. LP*, No. 3:15-CV-354-DJH, 2017 WL 4799816, at *2 (W.D. Ky. Oct. 24, 2017).

Here, like a surreply, it is within the Court's discretion to grant Plaintiff permission to address new submissions and arguments that were raised in Defendant's responsive brief by allowing Plaintiff to submit a short reply brief that will be no more than ten pages.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests leave to file a short reply of no more than ten pages to the issues addressed above.

Dated: November 20, 2018

Respectfully Submitted,

EXCOLO LAW, PLLC

By: /s/ Keith Altman
Keith Altman (P81702)
Excolo Law PLLC
26700 Lahser Road, Suite 401
Southfield, MI 48033
(516) 456-5885
kaltman@excololaw.com

Attorneys for Plaintiff and the Class

CERTIFICATE OF SERVICE

Undersigned hereby states that on November 20, 2018, he caused the foregoing document to be filed electronically with the United States District Court and that a copy of said document was sent to all counsel of record through the CM/ECF system.

/s/ Keith Altman